

Louisiana Property and Casualty Insurance Commission Full Commission Meeting

**Wednesday, March 4, 2009
Louisiana Department of Insurance
Plaza Hearing Room
1:30 p.m.**

Minutes

Commission Members Present: Commissioner Donelon, Ted Haik, Jeff Albright, Senator Troy Hebert, Senator Morrish, Representative Monica, Raymond Aleman, Chris Broadwater, Phyllis Perron (representing Lorrie Brouse), Manuel DePascual, Kay Hodges, Col. John LeBlanc, Rick McGimsey, Earl Taylor and Cherie Pinac (representing Aubrey Temple)

Commission Members Absent: Representative Page Cortez and Marc Carter

Commission Staff Present: Terrell Moss, Joyce Paul, David Evans and Katie Walsh

DOI Staff Present: Ed O'Brien, Clarissa Preston, Rich Piazza, Trent Beach, Alison Jones, Charles Hansberry, Judy Wright, Rachelle Carter, Roxie Brion, Shane O'Quin, John Lamke and Sherice Forte

Chairman Ted Haik called the meeting to order at 1:35 pm. He welcomed the attendees and reminded Commission members that this would be the last Louisiana Property and Casualty Insurance Commission (LPCIC) meeting before the Commission's annual report is presented to the Legislature. Mr. Haik reminded Commission members that they would be voting on concepts presented at the meeting in order to form legislative recommendations for the annual report.

Ms. Katie Walsh called the roll and reported that a quorum was present.

Mr. John Wortman, CEO of Louisiana Citizens Property Insurance Corporation, updated the Commission on the status of Citizens. He reported Citizens has gone through two rounds of depopulation, taking out 40,000 policies thus far and hopes to continue the program, by possibly adding a third round of depopulation before the 2009 hurricane season. Mr. Wortman discussed the status of Citizens' 2008 hurricane claims reporting that of the 51,000 Gustav claims, approximately 50,000 have been closed; and of the 3,600 Ike claims, approximately 200 remain open. To date about \$230 million has been paid in Gustav claims with loss adjustment expense raising the total cost to near \$250 million; however, no assessment is anticipated. Mr. Wortman noted that Citizens continues to address the number of individual and class action lawsuits remaining from Katrina and Rita and is pursuing replacement of the portion of Katrina debt secured by auction-rate bonds with fixed-interest rate bonds to obtain a more favorable rate. Citizens' 2008 annual statutory financial statement has been filed timely with the Department of Insurance for the first time in four years. From a legislative standpoint, Mr. Wortman expressed

the company's wishes to eliminate the FAIR and Coastal plans, leaving only Citizens remaining. At that point, he introduced Mr. Scott Romito, Citizens' Chief Actuary, who suggested changing the current law in order to produce more rate stability. The law in place creates the right kind of marketplace; however, in certain parishes the current formula can skew the rates.

Mr. Albright made a motion to adjust the current statute which makes Citizens non-competitive with the private market in order to eliminate statistical outliers.
Discussion followed.

Senator Morrish motioned to address Citizens' rate methodology.
Mr. Albright withdrew his motion and seconded Senator Morrish's motion.
With no further discussion and no objection, the motion passed.

Mr. Albright motioned to discontinue the FAIR and Coastal Plans and consolidate them into Citizens.
Mr. McGimsey seconded the motion.
With no discussion and no objection, the motion passed.

Lieutenant Colonel John LeBlanc, Executive Director of the Louisiana Highway Safety Commission, presented information from a seatbelt study, which supports seatbelt usage by all vehicle occupants. LTC LeBlanc also discussed the financial implications from failure to wear a seatbelt, specifically \$333 for every licensed driver in the state.

LTC LeBlanc motioned for the Commission to support a change in the current safety belt law (R.S. 32:295.1) by deleting the words "front seat", which would require all occupants to be belted.
Representative Monica seconded the motion.
With no discussion and no objection, the motion passed.

Mr. Murphy Painter, Commissioner of Alcohol and Tobacco Control and as Chairman of the Governor's DWI/Vehicular Homicide Task Force, spoke about several current DWI laws that should be modified in order to eliminate a possible advantage for drunk drivers who opt not to submit to the Implied Consent law (breathalyzer test) and in hopes that this stricter form of enforcement will decrease the number of drunk drivers on the road.

(These modifications were discussed in detail but are subject to change pending the final meeting of the Task Force on 4/13/09. The LPCIC was asked to support the basic concepts presented.)

LTC LeBlanc made a motion to amend R.S. 32:667(B)(2) and (4) as outlined by Chairman Painter. Section (B)(2) would state that if a driver refuses to take the breathalyzer test, his driving privileges should be suspended for two (2) years from the date of suspension for his first refusal and on a second and subsequent refusal, four (4) years. The current statute suspends the driver's privileges for 180 days and 545 days respectively. Section (B)(4) would state that if a driver refuses to take the breathalyzer test in any case involving a fatality or serious bodily injury, the driver would lose his driving privileges without benefit or eligibility for a hardship license.

Senator Morrish seconded the motion.

Discussion followed.

Mr. Taylor stated that it was his understanding that the current law gives law enforcement officials the authority to force a suspected drunk driver to take the test in cases involving serious injury or fatality.

Mr. Painter clarified Mr. Taylor's point by stating that in instances involving injury or fatality, oftentimes the driver will be removed from the accident scene and brought to the hospital, losing the opportunity to perform the tests. Mr. Painter also clarified that the tests he referred to are those referenced in the Implied Consent Law - the breath or blood test - and would not include the field sobriety tests.

In a response to a question posed by Mr. McGimsey concerning refusal where there was fatality or serious bodily injury, Ms. Kay Hodges clarified that a driver would be eligible to have his driver's license returned to him once the court imposed suspension of the license was completed. In response to Senator Morrish's question, Mr. Painter clarified that the blood tests would include testing for both alcohol and drugs. Finally, Mr. Painter explained that enforcing these new amendments would make the punishment for refusal of a blood-alcohol test equivalent to that of a driver who took the test and registered a blood alcohol level greater than .08. LTC LeBlanc added that the penalties would be equal to those for registering a .20 or above.

With no further discussion, the motion passed without objection.

Mr. Painter asked that the LPCIC consider amending R.S. 32:668 by deleting section (A)(6) and adding language to the law that limits the pre-discovery method currently enforced at administrative hearings.

LTC LeBlanc made a motion to support R.S. 32:668 as outlined by Chairman Painter.

Mr. Albright seconded the motion.

With no objection and no discussion, the motion passed.

Mr. Painter asked Commission members to consider supporting a new law, R.S. 14:98.3, which would criminalize operating a motor vehicle while the operator's driving privileges have been suspended under the Implied Consent Law.

LTC LeBlanc formed a motion in support of the recommendation outlined by Mr. Painter.

The motion was seconded.

Without objection or discussion, the motion passed.

Mr. Painter asked the Commission to support the addition of the prescription muscle relaxer, Soma, to the Controlled Dangerous Substance Act, Title 40.

LTC LeBlanc motioned to support this recommendation.

Representative Monica seconded the motion.

Discussion followed.

Mr. Painter offered a few more points of clarification on his recommendation. He stated that while there are other mood-altering and mind-altering, narcotic-type muscle relaxers included on Schedule 40, he is unsure of why Soma was not included on that list, although he hopes the recommendation to include it passes.

In response to a question posed by Mr. Taylor, Mr. Painter stated that the Governor is 100 percent in support of each recommendation of the Task Force. In closing, he stated that the prospective bills likely would be handled by Senator Dupre, Representative Perry, Representative Baldone, and Representative Wooten.

With no further discussion, the motion passed without objection.

Representative Monica offered several recommendations for the Commission to consider, which he hopes will reduce auto rates in Louisiana and its ranking as third highest in the nation.

Representative Monica motioned to repeal the Direct Action Clause in the state of Louisiana.

Mr. Aleman seconded the motion.

Discussion followed.

Senator Morrish requested that the term “Direct Action” be clarified.

Chairman Haik explained that direct action means that the plaintiff’s lawyer has the right to sue the insurance company directly and does not have to directly name the at-fault driver in an auto accident.

Mr. Taylor stated that oftentimes in a lawsuit, most lawyers name all parties involved, and therefore questioned the effectiveness of this recommendation on insurance rates or availability - especially without supporting statistics.

Mr. Kevin Cunningham, representing the American Insurance Association, acknowledged that he had no statistics that indicate whether direct action results in more or fewer people being sued nor could he declare that rates would be reduced by a certain percentage upon its repeal. However, direct action distinguishes Louisiana from all but one or two other states, which makes new insurers leery of doing business in a state that has an unfamiliar system. Repealing direct action should result in more insurers writing business in the state thereby increasing availability, which will achieve the competitive environment that will reduce rates.

Mr. Albright reaffirmed Mr. Cunningham’s points, noting that, based upon his experience, out-of-state insurance companies often perceive Louisiana’s legal system as different and scary. Direct Action is fairly regularly mentioned as one of these differences.

Chairman Haik agreed that the insurance industry has long considered direct action a problem – one that he tried to resolve in 1990 as Chairman of the House Insurance Committee. However, the trial lawyers were unwilling to negotiate repeal of direct action. While recognizing the various issues and concerns, Chairman Haik believes that direct action can be repealed without injuring trial lawyers or plaintiffs.

Ms. Pinac urged the Commission to be cautious about the drafting of legislation that would repeal direct action as it applies to workers’ compensation. Carriers would still want notice of suits against employers that arise from workers’ comp claims.

Mr. Taylor asked if the Commission would be in favor of recommending a prescriptive period of two (2) years in this instance in order to make sure who is covered and to make sure the proper defendants are named.

Chairman Haik deferred amending the current motion and called for a second, which was provided by Mr. Albright. (It is noted that this motion was previously seconded by Mr. Aleman.) Chairman Haik called for a vote with all in favor except Mr. Taylor.

The motion passed.

Mr. Taylor stated that he would like to present a minority paper that would be attached to any recommendation presented to the Legislature. Point taken.

Representative Monica referenced the statistics from the last meeting on the jury trial threshold and made a motion that the Commission recommend reducing the jury trial threshold from \$50,000 to \$10,000.

Mr. Albright seconded the motion.

Discussion followed.

Mr. Taylor asked if insurance companies view this concept favorably, since it would seem that for smaller absolute liability claims, plaintiff's attorneys would ask for a jury trial as a tool to run up the costs thereby encouraging insurers to settle quickly. Courts would be inundated with suits. Representative Monica stated that most insurers would support lowering the jury trial threshold. Mr. Broadwater asked if the Legislature has had any previous study resolutions on this matter in order to understand the impact of this recommendation.

Called to the table for discussion, Ms. Wanda Freeman of PCI recalled that a study may have been conducted several years ago by the Law Institute, but neither she nor Chairman Haik was able to recall specifics.

Mr. Kevin Cunningham stated that bills are frequently introduced to either raise or lower the threshold and many of these end up as study resolutions which fail to make a determination. He reiterated that the insurance industry is in favor of lowering the jury trial threshold.

Ms. Friedman recalled statistics presented by PCI at the last meeting that indicate that in states with lower jury trial thresholds the vast majority of cases do not go to trial; they settle.

Mr. Albright noted the support of the insurance industry and the business community for a number of years. They prefer greater access to jury trials.

Mr. McGimsey suggested that the delays associated with jury trials may work to the advantage of defendant insurers rather than the speedier access to bench trials, which may promote pre-trial settlements.

Mr. Taylor anticipated opposition by the judiciary and a backlog of the trial docket.

A vote was called. The motion passed with Mr. Taylor in opposition.

Mr. Taylor requested permission to file a minority report to be attached to the recommendation. Point taken.

Senator Morrish motioned that the Commission endorse the concept of a named storm deductible savings account, direct tax credits, and a seasonal hurricane deductible.

Mr. Albright seconded the motion.

Without objection or further discussion, the motion passed.

Mr. Taylor proposed to extend the prescriptive period for personal injury in negligent cases from one (1) year to two (2) years.

Mr. McGimsey seconded the motion.

Discussion followed.

Senator Morrish stated that he voted against similar legislation last year, but would now support it if direct action is repealed and the jury trial threshold is lowered.

In response to a question from Mr. Broadwater, Mr. Taylor explained that the additional year would be beneficial in preparing a complete and thorough lawsuit.

Mr. Broadwater expressed reluctance to vote on extending prescription without having some idea of how premium rates might increase.

Both Mr. McGimsey and Chairman Haik noted that neighboring states have a longer prescriptive period than Louisiana's.

Mr. McGimsey suggested that a longer prescription might reduce lawsuits in more serious injury cases, because it would allow more time to assess the extent of injury and to reach settlement.

Mr. Albright stated that a significant number of "initial claims" begin with the filing of a suit. It would be difficult for a defendant insurer to assemble the necessary evidence and witnesses for such a suit filed in a second year of prescription. Business and industry would perceive the extension of prescription as a negative.

A vote was taken. Those opposed exceeded those in favor. The motion failed.

Mr. Taylor again requested to have a minority report attached to the recommendation. Point taken.

With no further business to discuss, and upon a motion to adjourn by Mr. Albright, the Louisiana Property and Casualty Insurance Commission meeting ended at 3:00 pm.